

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALVIN D. DAVISTON, Jr.,
Plaintiff,

v.

**COMMONWEALTH OF
PENNSYLVANIA, *et al.*,**
Defendants.

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CIVIL ACTION NO. 23-CV-220

ORDER

AND NOW, this 27th day of January, 2023, upon consideration of Plaintiff Alvin D. Daviston, Jr.'s Motion to Proceed *In Forma Pauperis* (ECF No. 2), and *pro se* Complaint (ECF No. 1) it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. The Complaint is **DEEMED** filed.
3. The Clerk of Court is **DIRECTED** to add E.A. Schneider to the docket as a Defendant in this case.
4. Daviston's criminal charges, *Commonwealth v. Daviston*, CP-23-CR-368-2021 (C.P. Delaware), are **REMANDED** to the Delaware County Court of Common Pleas.
5. All claims against the Commonwealth of Pennsylvania and Delaware County Assistant District Attorney E. A. Schneider are **DISMISSED WITH PREJUDICE** for the reasons in the Court's Memorandum pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).
6. The Clerk of Court is **DIRECTED** to terminate the Commonwealth of Pennsylvania and Delaware County Assistant District Attorney E. A. Schneider as defendants.

7. The Fourth Amendment malicious prosecution claim against Defendant Detective John A. Hoffner is **DISMISSED WITHOUT PREJUDICE**. All other claims against Hoffner are **DISMISSED WITH PREJUDICE**.

8. No leave to amend is granted in this case. Daviston may file a new civil action to reassert his malicious prosecution claim if the criminal charges currently pending against him in *Commonwealth v. Daviston*, CP-23-CR-368-2021 (C.P. Delaware) are ever finally resolved in his favor.

9. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:

/s/ Juan R. Sánchez
JUAN R. SÁNCHEZ, C.J.